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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/456).

The Counter-Terrorism Committee has received the attached supplementary report from France, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Letter dated 10 July 2002 from the Permanent Representative of France to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Enclosed please find the supplementary report submitted by France to the Committee pursuant to Security Council resolution 1373 (2001).

(*Signed*) Jean-David **Levitte**

Enclosure

Supplementary report submitted by France to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001)*

Subparagraph 1 (a)

- **Are natural or legal persons other than banks (e.g. attorneys, notaries) required to report suspicious transactions that might be linked to terrorist activities to the public authorities? If so, what penalties apply to persons who omit to report either wilfully or by negligence?**

Act No. 90-614 of 12 July 1990, as amended, concerning participation of financial organizations in the fight against laundering of proceeds from drug trafficking, which is now part of the Monetary and Financial Code, set up a dual regime based on either a report concerning facts or a report concerning suspicions according to the circumstances.

Report concerning facts

Pursuant to article L561-1 of the Monetary and Financial Code, individuals who are not covered by the regime of reports concerning suspicions who, in the exercise of their profession, carry out, monitor or provide advice in respect of operations involving movements of capital, are required to report to the Public Prosecutor's Office operations of which they have knowledge involving monies that they *know* to be the proceeds of drug trafficking or the activities of criminal organizations.

A circular from the Ministry of Justice No. CRIM.90/-F.3 of 28 September 1990 states, in this connection, that this was aimed at the regulated professions such as bailiffs, real estate brokers, notaries, auditors, jewellers, antique dealers and attorneys.

Report concerning suspicions

Article L562-2 of the Monetary and Financial Code, which initially applied only to financial agencies and which requires the latter to report to TRACFIN, in writing or orally, monies on their books that might be the proceeds of drug trafficking or of organized crime and operations relating to such funds, has been amended and now applies also to certain non-financial professions. Thus the mechanism for the reporting of suspicions was broadened, in 1998, to include persons who carry out, monitor or provide advice in respect of operations relating to the acquisition, sale, transfer or rental of real estate and, in 2001, to legal representatives and heads of casinos and to persons who habitually engage in trade or organize the sale of precious stones, precious materials, antiques and works of art.

* The annexes are on file with the Secretariat and are available for consultation.

This broadening of the obligation to be vigilant in respect of the fight against money-laundering to non-financial professions will continue when Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001, amending Council Directive 91/308/CE preventing the use of the financial system for the purpose of money-laundering, becomes part of French law. Pursuant to this text the obligation to be vigilant is extended to include auditors, external accountants, tax advisers, notaries, lawyers and other members of independent legal professions. In accordance with the time frame set at the European level this directive will become part of French law by June 2003.

Pursuant to article L562-2 of the Monetary and Financial Code, the obligation to report suspicions relates inter alia to operations connected with organized crime. This includes terrorist activities.

Consequently, professionals outside the financial sphere who are covered by the regime of reports concerning suspicions, may perfectly well, if necessary, draw the attention of TRACFIN to suspicious transactions that might be connected with terrorist activities.

In fact, anti-terrorist action by TRACFIN proceeds essentially, in terms of reports of suspicious transactions, from its partnership with the banking network and public financial establishments. This is perfectly understandable given the nature of the majority of transactions believed to fuel terrorist networks: transfers, deposits and withdrawals of cash.

In the event of a blatant omission ... or grave negligence, following the example of the modalities for the operation of the mechanism to combat money-laundering, TRACFIN — which has no power to sanction — alerts the monitoring authority or the federative body of the professional involved.

Concerning the penalty for failure to comply with one or other of the above-mentioned obligations to report suspicions, French law does not spell out any penalty. However, aside from the administrative and/or disciplinary liability inherent in that obligation, the penalties provided for the offence of money-laundering may, where appropriate, be incurred by the professional involved, if such failure to report, combined with one or more material acts of money-laundering, can be interpreted as complicity in the commission of the offence.

- **In what circumstances can obligations of professional confidentiality be invoked in the course of judicial investigations?**

Professional confidentiality is one of the basic guarantees accorded to citizens in the exercise of public liberties. It is therefore up to the legislature, under article 34 of the Constitution of 4 October 1958, to determine the legal regime applicable to it.

The legal sense of that notion is stated not in the form of a positive definition, but in the form of a charge. Article 226-13 of the Penal Code states that revelation of confidential information by the person to whom such information has been entrusted because of their status or profession, or because they were temporarily filling or assigned to a post, is punishable by one year in prison and a fine of 15,000 euros.

For certain professions, including that of attorney, this general definition is accompanied by provisions designed to make confidentiality a specific obligation, breach of which entails disciplinary action, and to limit its scope more clearly.

Thus article 66-5 of the Act of 31 December 1971 which amends the judicial and legal professions, as amended by the Act of 7 April 1997, states that in all matters, whether in the area of advice or defence, advice given by an attorney to his client or intended for the latter, correspondence exchanged between a client and his attorney, between the attorney and his colleagues, notes taken during meetings and any documentary evidence in general shall be covered by professional confidentiality.

Since the legislature is responsible for determining the rules for protecting individual liberties, it must also establish limits thereto. Accordingly, article 226-14 of the Penal Code provides inter alia that article 226-13 (mentioned above) does not apply in cases where the law calls for or authorizes revelation of the confidential information. Thus professional confidentiality is not an impediment to judicial proceedings when the law determines modalities for waiving confidentiality. The fact that confidentiality cannot be invoked against a judicial court applies to all professions even though the modalities may vary from one profession to another, particularly in the case of attorneys.

Persons who are called on because of their position or remit to intervene in the application of legislation and regulations concerning financial relations with other countries are bound by professional confidentiality and are liable to the penalties provided for under articles 226-13 and 226-14 of the Penal Code (imprisonment for one year and a fine of 15,000 euros).

However, if regular proceedings have been instituted based on a complaint from the Minister of Economic Affairs, Finance and Industry, these *same persons may not invoke professional confidentiality to the examining magistrate or court wishing to question them about acts which are the subject of the complaint or related acts*.

This provision, which is codified in article 456 of the Customs Code, also applies to financial operations carried out in France by or on behalf of natural and artificial persons referred to in the community regulations adopted pursuant to articles 60 and 301 of the treaty establishing the European Community or in international treaties and agreements that have been duly approved and ratified.

- **Please provide more detail on how the financial tracking system ensures that funds received by associations are not diverted from their stated purposes to terrorist activities.**

The principle of freedom of association remains the principal characteristic of the law governing them. Currently there are two grounds for shutting down an organization as stated in article 3 of the Act of 1901: incompatibility with public order or accepted standards of behaviour and infringement of the republican form of government.

The principle of freedom of association means that associations that have simply been declared are not subject to any specific administrative controls. This rule is limited in the case of associations having special characteristics such as associations that are subsidized or that are of service to the public.

However, Act No. 93-122 of 29 January 1993 (so-called Sapin Act) introduced a number of provisions designed to combat corruption, some of which relate to associations. They are now codified in articles L.612-1 et seq. of the Commerce Code and provide for a certain amount of transparency in the accounts of the largest associations.

The main points of this legislation, which applies to any non-commercial legal person in private law that engages in economic activity, are as follows:

- any association that receives an annual subsidy of more than 150,000 euros (amount set by decree) from the State, a public establishment or local authority shall appoint at least one auditor and prepare a balance sheet, an income statement and an annex each year (art. L.612-4 of the Commerce Code);
- any association engaged in economic activity that exceeds two of the following (50 employees, a turnover of more than 20 million francs duty free, balance sheet of more than 10 million francs) shall appoint an auditor and prepare a balance sheet, income statement and annex each year.

These provisions make it possible to monitor the use of funds of the largest associations.

In the context of the reports concerning suspicious transactions that it receives, TRACFIN sometimes hears of financial transactions carried out or destined for associations headed by foreign nationals or by French nationals with close ties to foreign circles.

When the unit looks into these reports it conducts an initial examination of the real use to which the funds concerned have been put and, if appropriate, it may conclude that funds have been diverted to terrorist groups.

In the event that the case is referred to the courts, any police investigation that follows will take over from the financial investigations already conducted.

- **As a member of the G-20, France has pledged to stop abuse of informal banking networks. How will this commitment be given effect in French legislation?**

Pursuant to article L511-5 of the Monetary and Financial Code, only artificial persons that have been approved as credit establishments may carry out banking operations (receipt of funds from the public, credit operations and provision to the clients or handling of payment means).

Failure to abide by the provisions of article L511-5 of the Monetary and Financial Code is punishable, under article L571-3 of that same Code, by three years' imprisonment and a fine of 375,000 euros.

Consequently, informal banking activities are already unlawful in France. Implementation of the FATF special recommendation concerning informal banking networks requires no additional legislation.

Subparagraph 1 (c)

- **According to the report (French original text), France can freeze funds of non-resident natural and legal persons. Can it freeze the funds of persons resident in France?**

Articles L151-1 and L151-2 of the Monetary and Financial Code require a report, prior authorization or monitoring of currency exchange operations, movements of capital and payments of any kind between France and another country. Consequently, these restrictive measures relate only to non-resident persons. However, this matter is currently under review. In addition, the assets and property of persons residing in France can be seized by means of judicial proceedings.

- **Please clarify whether France has an autonomous administrative power, in the absence of any directly applicable EC Regulation to freeze funds and other financial assets or economic resources, to freeze funds etc. belonging to alleged terrorists or alleged members of terrorist organizations.**

Under paragraph (c) (1) of the report submitted by France to the Counter-Terrorism Committee, the Government, pursuant to articles L-151.1 and L-151.2 of the Monetary and Financial Code, has the power to freeze assets by decree (prescribed administrative measure taken by the Government) issued on the basis of the report of the minister of economic affairs, finance and industry and prepared by the Treasury Department, without reference to any Community Regulation.

In addition, under article 9 of regulation EC 2580/2001 of 27 December 2001, each member State determines the penalties to be imposed in the event of a violation of the said regulation.

Under article 459 of the Customs Code, the penalties incurred, which are mentioned in article 459 of the Customs Code, are imprisonment for from one to five years, confiscation of the corpus delicti, confiscation of the vehicle used for perpetrating the fraud and a fine equal to or double the amount involved in the offence.

This penalty can be applied to both natural and artificial persons.

Subparagraph 2 (a)

- **Is there any provision in French law to prohibit the acquisition of firearms without a licence?**

French legislation applicable in respect of the acquisition and possession of firearms is based, not on the principle of the need for a permit, which in the absolute would confer upon the bearer the ability to purchase any type of weapon, but on the application of specific procedures, which vary according to the nature and purpose of the weapon in question, and determine which of the eight categories it is placed in at the national level (see table below).

Category	*Brief description*
1	Firearms and ammunition designed or intended for land, naval or air warfare
2	Equipment intended for the transport or use of firearms in combat (tanks, armoured vehicles, warships, air weaponry)
3	Equipment to protect against gas and products intended for use in chemical or incendiary warfare, complete isolation or filtration suits and their individual elements (masks)
4	Defensive firearms and ammunition the acquisition and possession of which is subject to authorization (handguns and their ammunition)
5	Hunting weapons and ammunition
6	Steel weapons used in hand-to-hand combat (anything that could endanger public security — bayonets, sabres, daggers … or used to dispense aerosol incapacitants or tear gas)
7	Shotguns, air rifles and airguns and ammunition
8	Antique black powder firearms and reproductions thereof

French legislation forbids anyone from acquiring certain firearms — those in categories 1 and 4 — without prior authorization (this amounts to a "permit"). This classification corresponds to weapons in the "B" category according to Directive 91-477 of 18 June 1991.

French legislation allows a person to acquire firearms in category 5 upon presentation of a hunting permit or other document showing that he engages in hunting, or a sports licence. These are weapons used for hunting and trapshooting. Some of the weapons also require a report.

Acquisition of certain firearms in category 7 also requires a report.

Lastly, no one is permitted to carry a handgun — this includes alarm pistols and gas pistols — although specific waivers may be granted for the officials of certain national administrations responsible for security (police, gendarmerie, customs) and professions which may be open to especial dangers (armoured car guards, jewellers).

- **Apart from measures providing for the dissolution of associations mentioned in the report (subparagraph 2 (d), point (3)), please outline the measures, both legislative and practical, which prevent entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside France, including, in particular:**
  - **the carrying out, within or from France, of recruiting, electing of funds and soliciting of other forms of support from other countries; and**
  - **deceptive activities such as recruitment based on the representation to the recruit that the purpose of the recruitment is one (e.g., teaching)**

different from the true purpose and collection of funds through front organizations.

All activities for the support of terrorism described are likely to be regarded as terrorist acts in that they assume participation in "a grouping formed, or an entity established, for the purpose of preparation, characterized by one or more specific actions, of one of the terrorist acts" specified by the law. The penalty for this offence is 10 years' imprisonment. Even if the act of terrorism in question is committed abroad, that does not mean that the conspiracy did not take place in France.

Moreover, even if it cannot be proved that such activities constitute a crime, they may serve as basis, at the discretion of the administrative courts, for specific decisions if the people engaging in them are aliens: measures of expulsion, denial of authorization to reside in or enter France.

In practice, surveillance of suspect activities is carried out in several ways:

- Surveillance of locations or facilities where activities in support of terrorism are likely to occur, in particular through front organizations.
- Surveillance of Internet sites that may be used for recruitment activities, in particular where such recruitment is misrepresented as being of a religious nature, or for the collection of funds.

This task, which has been performed for many years in the context of the threat of terrorism from Islamic extremism, has given rise to many prosecutions or administrative decisions. It must, however, be emphasized that their effectiveness is sometimes limited by the difficulties of collecting evidence at the international level with respect to the transfer of capital, and by the less rigorous legislation obtaining in certain countries with respect to Internet activities.

Subparagraph 2 (b)

- **Which countries are members of the Berne Club mentioned in the report?**

The Berne Club is composed of the heads of the security and intelligence services of the member countries of the European Union, plus those of Switzerland and Norway.

Subparagraph 2 (e)

- **In the report (subparagraph 2 (a), point (1)), it is mentioned that the crimes prohibited by the Act of 29 July 1881 can be prosecuted in France regardless of whether terrorist activities are to be carried out in France or abroad. Is this true for all terrorist acts listed in subparagraph 2 (e), irrespective of the nationality of the perpetrator?**

Article 23 of the Act of 29 July 1881 covers and punishes public incitement to crimes where such incitement is acted on or results in an attempt to commit a crime.

This provision covers the commission of terrorist acts whether they are committed in France or abroad, as the text does not specify that the terrorist offence must be committed in the national territory, by a French national or against French interests.

Article 24 of the Press Act contains two provisions concerning terrorism:

- Public incitement to the commission of a terrorist act where such incitement is not acted on. It is not necessary that the terrorist act which, by definition, has not taken place, might have been perpetrated in the national territory, as article 24 makes no distinction between a terrorist act that might have been committed in France and an act that might have been perpetrated abroad.
- Advocacy of a terrorist act by depicting an act of terrorism that has been perpetrated, or those responsible, in a favourable light. Here again there is no distinction to be made between a terrorist act committed in France or abroad. The actions covered by article 24 are crimes that are punishable by five years' imprisonment and a fine of 45,000 euros.
- **Are the above-mentioned terrorist acts included among the offences for which foreigners can be extradited for acts committed abroad in accordance with article 3 of the law of 10 March 1927, as mentioned in the report (subparagraph 2 (f), point (2))?**

Under the consistent case law of the Court of Cassation, offences committed through the printed word, including those referred to above, are offences of a political nature that are not extraditable.

Subparagraph 2 (f)

- **What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met and how long, on average, does it actually take in practice to implement such a request in France?**

Neither French law nor the conventions currently in force with respect to international legal assistance prescribe a time frame for a response. However, every effort is made to ensure that requests, particularly those relating to counter-terrorism, are dealt with as promptly as possible.

Where the degree of urgency so warrants, even in the event of a request received by facsimile, a few hours may be enough for the competent French authorities to act on a request for judicial assistance.

- **Please describe how the requirement of reciprocity is applied in practice in relation both:**
  - **To judicial assistance and criminal matters; and**
  - **To cases of information exchanged involving TRACFIN.**

France points out that, as a general rule, French law does not make the granting of judicial assistance in criminal investigations subject to the condition of dual criminality, even where the measures requested imply recourse to enforcement measures.

In cases where reciprocal criminal liability is a condition for the granting of assistance by France, the only verification made is whether the specific acts set out in the request are indictable under French law. It is not necessary for the heads of indictment and the penalties provided to be identical in the law of the requesting State and in French law. It is therefore necessary, but sufficient, for the facts to be equally likely to give rise to criminal proceedings under French law, whatever the characterization of the crime.

Reciprocity is one of the three conditions governing the exchange of information between financial intelligence units, both in the field of measures to combat money-laundering and, by extension, in that of counter-terrorism. Such reciprocity is, indeed, a guarantee of real cooperation and of efficacity which, in addition, ensures both legal and operational balance in the context of the two-way flow of intelligence. Intelligence services can collaborate fully only if they wish, and have the capacity, to issue and respond to requests for financial intelligence, within the limits of their legal arrangements.

- **How are decisions on whether to offer assistance made if the only evidence available is meagre or contradictory?**

Even in cases in which reciprocal criminality is a condition for the grant of judicial assistance by France, it is not conditional on the substantiation of specific evidence. It is the existence in the requesting State of a criminal judicial procedure addressing acts that are criminally punishable that forms the basis of France's cooperation.

- **In this context, please indicate how the requirements of subparagraphs 2 (f) and 3 (b) of the resolution will affect French practice in matters relating to terrorist acts.**

As indicated above, French law allows judicial assistance to be granted even in the absence of dual criminality without requiring specific evidence and without any prior evaluation of the relevance or probative value of the prosecution evidence provided by the requesting State in support of its request. France therefore considers that this practice is in keeping with the spirit and letter of the above-mentioned provisions of the resolution.

Subparagraph 3 (c)

- **The CTC would be grateful to know with which countries France has entered into bilateral treaties on:**
  - **Extradition;**
  - **Mutual legal assistance in criminal matters;**
  - **Police cooperation;**
  - **Cooperation in administrative matters which are relevant in the present context.**

See the attached annex listing the agreements.

N.B.: Although the bilateral conventions and other instruments relating to mutual administrative assistance in customs matters do not specifically cover counter-terrorism, those instruments that offer a structured framework for the

exchange of information and for operational cooperation in combating customs fraud (drugs, weapons, explosives, and so forth) are consistent with that objective, in particular on account of the acknowledged links between such illicit trafficking and terrorist networks.

- **Could France please provide the CTC with a list of the countries with the authorities of which TRACFIN has entered into cooperation agreements (subparagraph 3 (b), point (2)).**

On 28 May 2002, TRACFIN signed 22 bilateral cooperation agreements with financial intelligence units.

Subparagraph 3 (d)

- **Please provide a progress report on the ratification and domestic implementation of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.**

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, is the only counter-terrorist convention to which France is not yet a party.

This Convention is one of the first international instruments prepared in the early 1970s to respond to the development of acts of international terrorism targeting, in particular, diplomats or diplomatic missions. The risk clearly still continues, in spite of national protection measures.

France, which reaffirms its determination to ensure the protection in its territory or abroad of the categories of persons mentioned, has begun the procedure for ratification of the Convention and the bill authorizing the accession of France is currently being considered by the Council of State.

Subparagraph 3 (e)

- **Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which France is party?**

The Act of 10 March 1927 relating to the extradition of aliens does not specify the list of actions that might justify extradition, but it specifies the general conditions that must be met: the action must, in particular, be an offence under French law and be punishable under French law by a term of imprisonment of at least two years.

It is this rule that is generally applied in bilateral extradition conventions concluded by France. However, the minimum term of imprisonment required is lower in certain conventions (one year in the extradition treaty between France and the United States of America of 23 April 1996).

Only a very small number of bilateral extradition treaties concluded in the nineteenth century or in the early twentieth century and remaining in force envisage restricting extradition in terms of a list of offences. Although acts of terrorism are not included in the list, serious attacks on persons or property are included and on

that basis extradition is possible where such actions are perpetrated in the context of terrorist activity.

Furthermore, it must be emphasized that all the international instruments covered by the resolution specifically provide that the offence or offences they define are included as extraditable offences in any treaty concluded between the Contracting States (see the convention of 16 December 1970, article 8; the convention of 23 September 1971, article 8 — which is also applicable to the protocol of 24 February 1988; the convention of 14 December 1973, article 8; the convention of 17 December 1979, article 10; the convention of 10 March 1988, article 11 — which is also applicable to the protocol of 10 March 1988; the convention of 15 December 1997, article 9; the convention of 9 December 1999, article 11). These provisions adequately supplement the old extradition treaties that may be based on a list of offences.

Subparagraph 3 (g)

- **Subparagraph 3 (g) of the resolution requests States to ensure "that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists". Please clarify whether France intends to modify its State practice as described in the report with a view to achieving compliance with that subparagraph.**

Subparagraph 3 (g) of resolution 1373 (2001) reads: "The Security Council [...] calls upon all States to: [...] (g) Ensure, in conformity with international law, that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists".

French law permits the refusal of extradition where the crime in respect of which extradition is sought is of a political nature. This principle is set forth in article 5, paragraph 2, of the Law of 10 March 1927, which specifies that "extradition shall not be granted [...] 2. where the crime or offence is of a political nature or where owing to the circumstances in question extradition is sought on political grounds".

This legal provision is not incompatible with the applicable international law, since in matters relating to extradition France's relations with third States are basically governed by the European Convention on Extradition of 13 December 1957, article 3, paragraph 1, of which states: "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence".

In an opinion rendered on 9 September 1995, the Council of State expressed the view that the principle that a State must reserve the right to refuse extradition for offences of a political nature constitutes a fundamental principle recognized by the laws of the Republic that have constitutional status in this respect.

The notion of a political offence in extradition law is not defined by the 1927 Law, whose preparatory documents allow for both an objective concept of a political offence (based on the very nature of the act concerned), and a subjective concept (based on the intention of the author of the act). For many years, the jurisprudence of the Council of State has defined the notion in question.

Although the Council's jurisprudence takes account of the subjective element constituted in particular by the motive or intention of the author in order to characterize an offence under ordinary law as a political offence, an analysis of this jurisprudence shows that subjective factors are actually largely tempered by objective factors. In keeping with its consistent jurisprudence, the Council of State does not take account of the political nature of an offence with respect to which extradition is sought where, even though a political goal is being pursued, the factors involved are particularly serious. The Council normally stresses that, in view of their seriousness, the fact that the acts in question were carried out in pursuit of a political goal is not sufficient for them to be considered as being of a political nature (by way of comparison, see EC, 7 July 1978, Croissant; EC, 15 February 1980, Gabor Winter; EC, 13 October 1982, Piperno). Consequently, the political nature of an offence is not taken into account where it is a question of criminal acts of such a nature that the alleged political goal would not justify the use of unacceptable means.

This jurisprudence is illustrated by many judgements, particularly in connection with offences related to terrorism (for example, by way of comparison see EC, 26 September 1984, Lujambio Galdeano; EC, 23 September 1988, Jimenez Zurbano; EC, 26 October 1988, Arriaga Martinez; EC, 27 February 1987, Trincanato; EC, 8 April 1987, Procopio; EC, 21 December 1988, Fernando de Luis Astarloa; EC, 20 September 1993, Sanchez Del Arco; EC, 9 May 1994, Bracci; EC, 24 February 1995, Persichetti; EC, 26 January 2000, Echevarria Martin).

Moreover, it has enabled France to ratify international conventions containing depoliticization clauses (International Convention of 15 December 1997 for the Suppression of Terrorist Bombings; and the International Convention of 9 December 1999 for the Suppression of the Financing of Terrorism).

The Council of State's established jurisprudence, consisting in non-recognition of a political nature in the case of particularly serious offences, which is the category of offences that applies in the case of terrorist acts, thus provides a sufficient guarantee that claims of political motivation will not be regarded as a justification for rejecting requests for the extradition of alleged terrorists; this means that there is no reason to amend France's domestic legislation or change its "State practice".

- **In particular, please clarify whether France's reservation made in accordance with article 13, paragraph 1, of the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, continues to be valid vis-à-vis the States parties to that Convention and whether it reflects France's State practice with regard to other States.**

Article 13 of the European Convention of 27 January 1977 on the Suppression of Terrorism authorizes a State party to declare that it reserves the right to refuse extradition in respect of any offence mentioned in article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence (including by means of the assessment of certain elements).

The French Government, when depositing its instrument of ratification on 21 September 1987, declared that it reserved the right to refuse extradition, in accordance with the provisions of article 13, paragraph 1, of the Convention.

That declaration remains fully valid in the current instance, and the French Government does not plan to amend it in any way; first, in accordance with the jurisprudence of the Council of State, due account was taken of the particularly serious nature of the offence already at the point where the nature of the offence was determined (see above), and, second, the Convention is currently under review in the context of the work of the Council of Europe.

Other matters

- **Could France please provide an organizational chart of the administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that were seen as contributing to compliance with the resolution.**

Organizational chart

Ministry of Foreign Affairs

Directorate of Strategic and Disarmament Affairs — Subdirectorate of Security

Areas of responsibility: Contact point vis-à-vis the Counter-Terrorism Committee.

Ministry of Justice

Office of European and International Affairs

Areas of responsibility: The Office assists in the development of European and international law; it ensures liaison with national and international bodies; and it ensures the transposition into and implementation under domestic law of international instruments.

Directorate of Criminal Affairs and Pardons

Areas of responsibility: Preparation of relevant draft legislation and decrees submitted by the Minister of Justice; drafting and evaluation of general instructions on penal policy for procurators-general; monitoring of public action.

Ministry of Economic Affairs, Finance and Industry

Treasury Department

Areas of responsibility: Financing of terrorism. Partner of regulatory authorities (Banking Commission, Insurance Control Commission, Stock-Exchange Operations Commission), banks and other financial institutions. Combating financing of terrorism (prevention); injunctions concerning the freezing of assets, structural and legal questions relating to banking and financial operations, international cooperation. Preparations for and monitoring of summits and international multilateral meetings of a general nature (Group of Seven; Group of Eight, Group of Twenty; International Monetary and Financial Committee (International Monetary Fund); Financial Action Task Force on Money-Laundering).

French Financial Intelligence Unit (TRACFIN)

Areas of responsibility: TRACFIN, which is a financial information service, gathers and processes information from a variety of sources, including statements by financial organizations voicing their suspicions and requests made by their foreign counterparts. In this connection, TRACFIN may have occasion to gather information on the alleged financing of terrorist networks. Once a sufficient volume of information has been collected, the relevant files may be transmitted to the judicial authorities.

Directorate-General of Customs and Indirect Taxes

The Directorate-General's counter-terrorist action is focused particularly on monitoring the effectiveness of measures to freeze assets and prosecution for non-compliance with such measures, efforts to prevent laundering of money from illicit trafficking in drugs, monitoring of products and strategic technologies, monitoring of arms and materiel, prevention of terrorist acts by means of security

controls at airports (hold baggage and freight) and the Transmanche fixed link (English Channel link), and participation in immigration controls in cooperation with the Border Police (Ministry of the Interior).

Ministry of the Interior

Directorate-General of the National Police

The Directorate-General of the National Police deals with various aspects of counter-terrorism. Counter-terrorist activities as a whole are coordinated by the Anti-Terrorist Coordination Unit (UCLAT). The Office of International Police Technical Cooperation is involved in the execution of cooperative action.

Anti-Terrorist Coordination Unit (UCLAT)

Areas of responsibility: The Coordination Unit, which reports direct to the Director-General of the National Police, is responsible for coordinating and leading the counter-terrorist endeavour by providing a link between the various actors involved, in recognition of the inter-ministerial dimension of the endeavour.

In particular, the Coordination Unit sets up links between:

- The intelligence services (Directorate of Internal Surveillance, and Central Directorate of General Intelligence)
- The services responsible for preventive measures (Central Directorate of the Border Police)
- The services responsible for criminal policing (Central Directorate of the Judicial Police)
- RAID ("Recherche, Assistance, Intervention, Dissuasion"), a specialized intervention unit of the National Police.

Office of International Technical Police Cooperation (SCTIP)

Areas of responsibility: The Office of International Technical Police Cooperation carries out many cooperation activities to combat all forms of international crime, including terrorism, through its 62 delegations at French embassies around the world. The action in question, which may be in the form of internships, visits, or missions, is carried out in all counter-terrorism fields.

Central Directorate of the Judicial Police (DCPJ)

Areas of responsibility: The financial aspects of counter-terrorism are dealt with at the subdirectorate for economic and financial affairs of the Central Directorate of the Judicial Police by the Central Office for the Suppression of Major Financial Crime (OCRGDF) and the National Division of Financial Investigations.

Directorate of Civil Liberties and Legal Affairs

Areas of responsibility: Drafting documents and legal norms on transborder traffic and temporary and permanent residence.

Central Directorate of the Border Police

Areas of responsibility: Legislative and statutory implementation in matters relating to the Border Police.

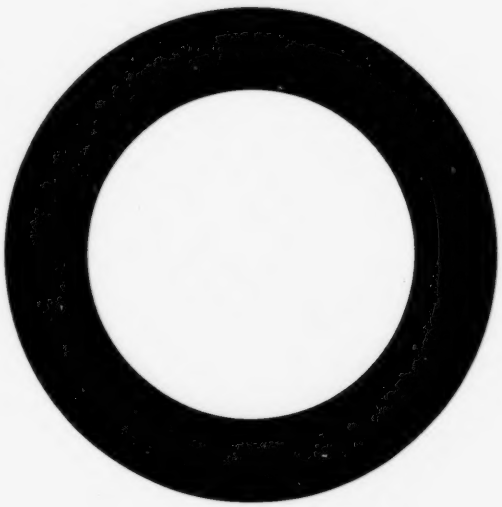
Ministry of Defence

Directorate-General of the National Gendarmerie (DGGN)

Areas of responsibility: The National Gendarmerie deals with intervention and protection techniques. Its activities cover the entire range of police missions in the area of counter-terrorism, from intelligence gathering to active involvement of units such as the National Gendarmerie Intervention Group (GIGN).

General Armed Forces Inspectorate

The General Armed Forces Inspectorate is responsible for controlling arms traffic (trade in and possession of arms and materiel, monitoring of actors, registration system and criminal penalties regime for violations).



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Security Council

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/447).

The Counter-Terrorism Committee has received the attached supplementary report from Guatemala, submitted pursuant to paragraph 6 of resolution 1373 (2002) (see annex).

I would be grateful if you could arrange for this letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 8 July 2002 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

As foreshadowed in paragraph 1.3 of the guidance note issued by the Counter-Terrorism Committee on 26 October 2001, regarding the preliminary comments on the report of the Government of Guatemala submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001), I am pleased to submit herewith to the Committee you preside a second report on the steps taken by the Government of Guatemala to comply with commitments contained in said resolution (see enclosure).

I hope that the information contained in the document now being submitted to the Counter-Terrorism Committee is found to be useful.

(*Signed*) Gert **Rosenthal**
Permanent Representative

Enclosure

Supplementary questions concerning resolution 1373 (2001)*

On behalf of the Counter-Terrorism Committee (CTC), I would like to thank you for your letter dated 24 December 2001 (S/2001/1272) enclosing the report of the Government of Guatemala submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (the Resolution).

The CTC has considered the report carefully, with the assistance of its panel of experts. As foreshadowed in paragraph 1.3 of the guidance note issued by the CTC on 26 October 2001, the CTC has the following preliminary comments on the report (arranged by reference to the relevant paragraphs and subparagraphs of the resolution).

Subparagraph 1 (a)

Could Guatemala please clarify whether the Guatemalan Act against money-laundering covers only proceeds of crime? Does Guatemala intend to prohibit all forms of financing terrorism, including from legal sources? Please set out the time frame for any such prohibition to come into effect both in law and in practice.

Does Guatemala have any provision for regulating informal banking networks? Please outline such provisions.

The Guatemalan Act Against the Laundering of Money or Other Assets is applicable only to activities that stem from or originate in the commission of an offence, as set forth in article 2 of the Act.

As to Guatemala's intention to prohibit all forms of financing terrorism, an inter-agency committee composed of representatives of State agencies and other Guatemalan government institutions, which prepared the reports requested by the Security Council and is providing replies to its supplementary questions, is working on a draft act to prevent and combat terrorism.

Subparagraph 1 (b)

Do the provisions in the Penal Code mentioned in relation to this subparagraph criminalize the collection of funds in Guatemala for the support of terrorism outside Guatemala?

Please indicate the extent to which those provisions cover all the acts required to be criminalized under this subparagraph.

The aforementioned provisions of the Guatemalan Penal Code pertaining to the collection of funds for the support of terrorism are, for the time being, applicable to offences committed in the territory of Guatemala, except in the cases of extraterritoriality specifically contained in article 5 of the Penal Code, entitled "Extraterritoriality of the penal law".

In addition, the Act on Banks and Financial Groups, Decree-Law No. 19-2002 of the Congress of the Republic, defined what is meant by "offshore entities" in the country, regulated their operation and indicated under what circumstances their

* The annexes are on file with the Secretariat and are available for consultation.

operating permit could be revoked; thus, entities constituted outside our country that operate in Guatemala are being regulated.

Subparagraph 1 (c)

Do Guatemalan legal provisions permit the freezing of funds as required by subparagraph 1 (c)? Please outline the relevant provisions.

Yes, Guatemalan law permits the freezing of funds. In accordance with article 278 of the Code of Criminal Procedure and article 530 of the Code of Civil and Commercial Procedure, a competent judge may, at the request of the Office of the Public Prosecutor, order an emergency precautionary measure by which the seizure of goods and other resources, including funds deposited in bank accounts, is effected; the measure can be applied once it is known that funds deposited in the national banking system are connected with persons who collaborate with terrorism, and it has the same effect as the freezing of funds, for once the seizure becomes effective, the account holder cannot use the resources.

In specific cases related to the laundering of money or other assets, article 12 of the Act Against the Laundering of Money or Other Assets, Legislative Decree No. 67-2001, establishes that in case of *periculum in mora*, the Office of the Public Prosecutor may order the confiscation, seizure or freezing of property, documents and bank accounts; such an order must be confirmed immediately by a competent judge or court.

In addition to the foregoing, article 13 of the said Act establishes a system of custody of the confiscated goods, which are entrusted to the Office of the Public Prosecutor.

Subparagraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

Since the law establishes that customers must indicate, when initiating a commercial relationship with one of the persons targeted by the Act Against the Laundering of Money or Other Assets, whether they are carrying out a transaction on their own behalf or on behalf of third persons, institutions will be able to determine whether the money belongs to the person who appears or whether that person is appearing on behalf of someone else.

Moreover, with the development of the "know your customer" policy, targeted entities will have committed themselves to knowing the source of the funds used by customers, thus making it possible to determine whether the funds were diverted for use by that customer from some other person who has no commercial or other type of relationship, who might carry out ordinary transactions for this type of customer.

Notwithstanding the above, we wish to point out that we lack experience with regard to the mechanisms for determining whether funds are to be used for terrorist activities; we are therefore requesting technical assistance in this area so that the mechanisms can be implemented as soon as possible.

Subparagraph 2 (a)

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Guatemala, including, in particular:

- *the carrying out, within or from Guatemala, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and*
- *deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.*

Please outline the regulations governing the acquisition of weapons in Guatemala. Please provide a copy of Decree-Law No. 38-39 and a progress report on the proposed amendment to this Decree-Law to improve the control and licensing (asignación) of arms.

The Guatemalan Penal Code, in its Book II, Title XI, Chapter III, defines offences which compromise the foreign affairs of the State; there are two offences that may be applicable:

- **Interference**: Article 371 defines as one of the "Crimes which compromise the foreign affairs of the State" the so-called crime of interference, stating: "Anyone who, in Guatemalan territory, carries out activities designed to modify the political system of another State through violence shall be sentenced to one to three years' imprisonment and a fine".
- **Hostile acts**: Article 372 of the Penal Code defines the so-called crime of hostile acts, stating: "Anyone who, without the approval of the Guatemalan Government, commits hostile acts against another State which might give rise to a declaration of war against Guatemala shall be sentenced to two to eight years' imprisonment. Anyone who, under the same circumstances, exposes Guatemalans to potential humiliation or reprisals against their person or property or alters the friendly relations between the Government of Guatemala and a foreign Government shall also be subject to such a sentence. The sentence shall be doubled if the said hostile acts result in war."

The acquisition of weapons in Guatemala is governed by the Arms and Munitions Act, Decree-Law No. 39-89, and its Regulations. Article 18 of the Act establishes the functions of the Department of Arms and Munitions Control, as follows:

(a) Authorizing, registering and controlling the importation, manufacture, sale, donation, exportation, warehousing, de-warehousing, transport and bearing of weapons;

(b) Authorizing, registering and controlling the importation, manufacture, exportation, warehousing, de-warehousing and transport of ammunition;

(c) Authorizing and controlling the operation of armouries, shooting ranges and ammunition reconditioning machines;

(d) Registering and controlling the possession of arms;

(e) Keeping a registry of the ballistic fingerprints of all firearms;

(f) Keeping a registry of the trademarks of the ... ting associations which sell arms and ammunition;

(g) Carrying out at least every 30 days, or whenev... ry, a physical inventory of the stock of firearms and ar... ercial establishments and places of deposit;

(h) Inspecting shooting ranges and their record bo... med necessary to do so;

(i) Carrying out other functions assigned to it by th...

The draft amendments to Decree-Law No. 39-89 on ar... being processed by the legislature.

In addition, by means of Decree-Law No. 24-2002... 2, the legislature approved the Inter-American Convention ... Illicit Manufacturing of and Trafficking in Firearms, Ammunitio... Other Related Materials, which is pending ratification by the Pres... lic.

Subparagraph 2 (b)

Could Guatemala please describe the mechanism for ... ration on an early warning mechanism for the exchange of infor... States, and for providing a unified approach in implementing the re...

Control of narcotic drugs

In accordance with article 71 of Decree-Law No. ... Combat Trafficking in Narcotic Drugs), the Commission against A... Drug Trafficking (CCATID) "will study and decide on national p... cation and treatment of addictions and the prevention of ill... drug trafficking in all its manifestations and related activities".

Article 72 (e) of the aforesaid Act establishes that th... CCATID are to "take decisions, make recommendations and for... and prevention plans to be complied with at the administrative l... ted by the various police and other security forces in the country, ... ot and prosecute any illegal activity relating to illicit drug traffi... forms and related activities".

In accordance with the National Anti-Drug Plan 19... em of illegal drugs is addressed from two sides, namely: (a) drug ... plans, designs and carries out all actions relating to pre... and rehabilitation, and research into the use of drugs, and (b) ... ply of drugs; this side is responsible for all actions relating to re... ility of drugs among the population.

CCATID, through its Executive Secretariat, coordinate... tal and non-governmental organizations the efforts needed to p... ntion campaigns. It also has at its disposal an ambulatory treatm... with addictions.

With regard to controlling the supply of drugs, the M... has a legal mandate to oversee the National Civil Police ... t of Antinarcotic Operations, the bodies responsible for contro... drugs,

which maintain close communication with the Executive Secretariat of CCATID; the Minister of the Interior is the Vice-Chairman of CCATID.

CCATID also maintains close communication with the Ministry of Defence, which is responsible for drug interdiction by air and sea.

With regard to the importation, exportation and control of legal chemicals and narcotics, and with regard to addiction treatment centres, CCATID maintains close communication with the Ministry of Public Health and Social Welfare, the government agency responsible for this area.

Lastly, a channel for inter-agency communication is being established by the Committee on Drug Trafficking and Drug Dependency through the agencies involved in controlling the supply of drugs, which meet periodically to discuss matters of interest.

At the international level, the Ministry of the Interior maintains coordination and exchanges information with INTERPOL through the relevant channels. The Ministry of Defence also carries out these activities through the Conference of Central American Armed Forces.

The National Civil Police of Guatemala is also a member of the Association of Central American Chiefs of Police, through which information is exchanged.

Financial tracking

Resolution AC-02-1998 of 20 February 1998 contains the Agreement on the Exchange of Information among Members of the Central American Council of Controllers of Banks, Insurance Companies and Other Financial Institutions, which makes it possible to receive information within this framework.

Reciprocal legal assistance is established at the domestic level in article 34 of the Act Against the Laundering of Money and Other Assets, as follows:

> "**Reciprocal legal assistance**. With a view to facilitating the prosecution and investigation of offences covered by this Act, the Office of the Public Prosecutor, as well as any other competent authority, may provide assistance to and seek assistance from the competent authorities of other countries in order to:
>
> - Obtain evidence or hear statements by individuals;
> - Present legal instruments;
> - Carry out inspections and effect seizures;
> - Examine articles and places;
> - Provide information and evidence;
> - Supply originals and authentic copies of documents and files concerning a given case, including banking, financial and commercial documents;
> - Identify products, instruments and other forms of evidence;
> - Provide or seek any other type of reciprocal judicial assistance permitted under domestic law."

Security

The Office of the Inter-Agency Security Coordinator, on the basis of one of the Coordinator's functions, as stipulated in Government Decision No. 429-2001, dated 17 October 2001, keeps a communication channel open in order to assist exchanges of information on terrorism and related activities that may be required by any similar international agency.

Subparagraph 2 (c)

Does the Government's Decision No. 383-2001 cover those who may be charged in another country with the acts mentioned in this paragraph? Is there any procedure for investigations before refugee status is granted to an individual? Please describe the procedure.

Since May 2002, in accordance with article 29 of Government Decision No. 383-2001, the Department for Immigration has effected verification of the background of persons applying for refugee status, in order to determine whether the applicants are covered by the prohibitions laid down in article IV of the said Decision.

Government Decision No. 383-2001, entitled "Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala", establishes in its article IV that:

> "Refugee status cannot be granted to a person to whom any of the following situations apply:
>
> (a) He has committed a crime against the peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) He has committed a serious non-political crime outside Guatemalan territory; and
>
> (c) He has been guilty of acts contrary to the purposes and principles of the United Nations."

It may be inferred from the above that Guatemala does not grant refugee status to applicants covered by the preceding hypotheses.

Chapter VI of the aforesaid Regulations governs the procedure for granting refugee status, which includes an investigation phase prior to the granting of such status.

Article 29 of the Regulations establishes the following:

> "**Verification**: Once the personal interviews have been completed, the Department for Immigration may, within a period of 30 days, request private individuals and national and international civil servants and institutions, both inside and outside Guatemala, with the exception of the authorities of the country of origin of the applicants, to supply such reports, documents or opinions as it may consider necessary in order to verify the information it has collected".

In duly qualified cases, the Department for Immigration may extend the period indicated with a view to collecting the information or documentation that may be required in order to effect verification.

Subparagraph 2 (d)

Do the provisions of Guatemala's Penal Code covering the crimes of interference and hostile acts, and the various crimes of international scope, cover all the acts listed in the subparagraph? Does Guatemala intend to extend its penal legislation, or introduce other measures, to prevent the perpetration of those acts?

The offences mentioned cover several of the acts referred to in subparagraph 2 (d) of the resolution. The possibility of extending our penal legislation is being analysed.

In addition, the Forum of Presidents of the Legislative Branch of Central America (FOPREL), of which Guatemala is a member, is working on the establishment of a "Model Antiterrorist Act", which will serve as a basis for the enactment of specific laws by each of the member States.

Moreover, in our legislation there is a legal description which broadly punishes terrorist activity, and which covers several of the acts mentioned in paragraph 2 (d) of resolution 1373 (2001). Article 391 of the Penal Code establishes that:

> "Anyone who, for the purposes of undermining the constitutional order or disturbing public order, executes acts aimed at starting fires or causing havoc or rail, maritime, fluvial or air disasters, shall be sentenced to 5 to 15 years' imprisonment.
>
> "If explosive materials having great destructive power are used in the commission of this offence and if, as a consequence thereof, death or serious injury results to one or more persons, the perpetrator shall be sentenced to 10 to 30 years' imprisonment."

Subparagraph 2 (e)

Are the acts of terrorism, described in the Resolution, all specific offences under the Penal Code, with penalties that duly reflect the seriousness of the offences? Please provide details.

Are the relevant provisions of the Penal Code of Guatemala applicable in all of the following circumstances:

- *acts committed outside Guatemala by a person who is a citizen of, or habitually resident in, Guatemala (whether that person is currently present in Guatemala or not);*
- *acts committed outside Guatemala by a foreign national who is currently in Guatemala?*

Guatemalan legislation covers a number of the terrorist acts described in resolution 1373 (2001). The definition of terrorism given in Article 391 of the Penal Code is broad.

Article 5 of the Penal Code covers the extraterritoriality of the law and applies in the following cases:

1. Acts committed outside Guatemala by an official in the service of the Republic, in respect of which no legal proceedings have been instituted in the country in which the offence was committed.

2. Acts committed on board a Guatemalan vessel, aircraft or any other vehicle, in respect of which no legal proceedings have been instituted in the country in which they were committed.

3. Acts committed outside Guatemala by a Guatemalan where a request for extradition has been denied.

4. Acts committed outside Guatemala against a Guatemalan, in respect of which no legal proceedings have been instituted in the country in which they were committed, provided that the Public Prosecutor's Office has filed charges and that the accused is in Guatemala.

5. Acts which, according to a treaty or agreement, are punishable in Guatemala, even if they were not committed on Guatemalan territory.

6. Acts committed outside Guatemala against the security, constitutional order or territorial integrity of the State, such as forgery of the signature of the President of the Republic, forgery of currency or bank bills which are legal tender, bonds and other credit instruments and commercial papers.

Article 6 of the Penal Code concerning foreign judgements, states that in cases covered by paragraphs 1 and 6 of the above-mentioned article, the accused shall be prosecuted under Guatemalan law even if he has been acquitted or sentenced outside Guatemala.

Article 8 of the Penal Code (Extradition) states that extradition may be requested or granted only in respect of ordinary crimes. If extradition is in the context of an international treaty, it may only be granted if there is reciprocity.

Subparagraph 2 (f)

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met and how long does it actually take in practice to implement such a request?

Please outline the law which authorizes the authorities to provide assistance in connection with criminal investigations or criminal procedures as required by subparagraph 2 (f) of the Resolution.

Guatemala is in a position to respond promptly to any request for judicial assistance in criminal proceedings relating to the financing of terrorist acts, according to the circumstances of each particular case.

Under the Code of Private International Law, the Inter-American Convention on Letters Rogatory — to which Guatemala is a party — and the Judicial Branch Act, the relevant Guatemalan authorities are authorized to provide assistance in criminal investigations and proceedings relating to the financing of terrorism.

Guatemala has also signed the following agreements concerning judicial assistance:

- mutual judicial assistance in criminal matters between the Rica, El Salvador, Guatemala, Honduras, Nicaragua and

- tion between the Government of the Republic of Guatemala nt of the United Mexican States concerning mutual judicial

Subp

ther the Multi-Disciplinary Committee also has the task of
inten *erating exchange of operational information with other*
coun *es outside the OAS, as required under this subparagraph.*

a multidisciplinary group that operates under the direction
of the *curity Coordinator. It is working on preliminary draft*
amend *ms and Ammunition Act No. 39-89 so as to strengthen the*
articl *rnational trade in firearms, their parts and ammunition so as*
to pre *aking in arms or diversion thereof for illegal uses and*
purpo

exchange of operational information with agencies of other
countr* * of the tasks of the multidisciplinary group (arms and
ammu*

Subp

How Guatemalan legislation deals with the exchange of
inform *the commission of terrorist acts as distinct from money-*
launde

omalan legislation provides for the exchange of information,
but o* *oney-laundering and financial information, not in respect of
the * *ist acts as distinct from money-laundering.

is no specific legislation dealing with the exchange of
infor* *the commission of terrorist acts; there are, however,
admi* *nts at the level of various State entities with counterparts in
other* *greements are currently being evaluated.

the exchange of information concerning financial and banking
overs* *gned between the Office of the Controller of Banks and its
counte* *countries, thereby permitting the oversight body to obtain
finan*

*fice of the Controller of Banks, through the Special Audit
Office* *gned a Memorandum of Understanding with the financial
intelli* *Salvador, Panama and Colombia and is in the process of
signin* *ndums with its counterparts in other countries; it is hoped
that* * be signed in the next few weeks and this could be used to
exchan* *garding money-laundering.

*l security, the Ministry of Defence and the Ministry of the
Intac* *ements with international entities such as INTERPOL and
CFAC* * Central American Armed Forces).

Subparagraph 3 (c)

Could Guatemala please indicate whether it has entered into any bilateral or multilateral agreements to prevent and suppress terrorist acts?

The international treaties on the matter to which Guatemala is a party are as follows:

- Treaty between the Government of the Republic of Guatemala and the Government of the United Mexican States concerning the serving of prison sentences;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- Convention for the Suppression of Unlawful Seizure of Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- International Convention against the Taking of Hostages;
- Convention on the Physical Protection of Nuclear Material;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Marking of Plastic Explosives for the Purpose of Detection;
- OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance;
- International Convention for the Suppression of Terrorist Bombings;
- International Convention for the Suppression of the Financing of Terrorism.

Guatemala has also signed the:

- Central American comprehensive cooperation plan to prevent and counteract terrorism and related activities;
- Framework agreement against terrorism between the countries of Central America and the Caribbean Basin;
- Joint communiqué concerning security on the border issued by the Presidents of the Republics of the United Mexican States and Guatemala.

Subparagraph 3 (d)

Please provide a progress report on the ratification of those of the international conventions and protocols relating to terrorism to which Guatemala has not yet acceded.

On 12 February 2002, Guatemala deposited with the Secretary-General of the United Nations the instruments of ratification for the following:

- International Convention for the Suppression of the Financing of Terrorism;

- International Convention for the Suppression of Terrorist Bombings;
- On 3 June 2002 Guatemala signed the Inter-American Convention against Terrorism.

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, both of which were done at Rome on 10 March 1988, are at the stage of internal administrative consultation. The comments requested from various ministries are beginning to come in.

Subparagraph 3 (e)

Have the crimes specified in the relevant international conventions been included as extraditable offences in the bilateral treaties which Guatemala has concluded with other countries, in accordance with the provisions of United Nations conventions on terrorism?

Since Guatemala is a party to the multilateral conventions on terrorism, it has the legal means to give effect to active or passive legal extradition vis-à-vis States parties to these conventions, which contain a provision stipulating that where States make extradition subject to the provisions of international treaties, such treaties shall be regarded as a sufficient basis for proceeding with extradition. Guatemala must expand its legislation so as to create the offences referred to in the conventions in question or, where such offences already exist, so as to increase the penalties, since among the commitments that States make upon accepting the conventions is the commitment to make the offences in question punishable as "serious crimes".

The Code of Private International Law, book III, title 3, article 353, indicates that it is necessary that the act which gives rise to the extradition be a criminal offence in the legislation of the requesting and requested States.

In the Convention on Extradition concluded between Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, article 1 states that the contracting Republics agree to hand over to one another on a reciprocal basis individuals who take refuge in their respective territories who have been sentenced in one of the other contracting Republics as perpetrators of a crime or as accomplices or accessories after the fact to not less than two years' imprisonment or have been tried for a crime that under the legislation of the requesting country carries a penalty either equal to or greater than the one to which reference has been made.

Under article 1 of the Convention on Extradition signed at Montevideo, at the Seventh International Conference of American States, States parties undertake to hand over to other States that so request individuals on their territory who are accused of crimes or have been sentenced in that connection, provided that the following circumstances apply:

(a) The requesting State has jurisdiction to try and punish the offence attributed to the individual whom it desires to extradite;

(b) The act for which extradition is sought constitutes a crime and is punishable under the laws of the requesting and requested States with a minimum penalty of one year's imprisonment.

Guatemala's bilateral treaties with Belgium, Spain and the United States should be amended, since they contain a list of crimes; it would be more appropriate for extradition to be based on whether or not the acts in question are regarded as crimes in the States parties.

Subparagraph 3 (g)

Is there a law governing extradition, or is extradition governed by bilateral treaties? Can extradition for terrorist acts be refused on political grounds?

When compared with section F of article 1 of the Geneva Convention relating to the Status of Refugees, the Immigration Act, Decree No. 95-98, appears to restrict the reasons for which a refugee can be expelled from Guatemala. Please clarify the effect of the Immigration Act.

In Guatemala extradition is dealt with in article 27 of the Constitution, which states that "extradition is governed by the provisions of international treaties".

This provision stipulates that the expulsion of Guatemalan citizens shall not be initiated for political crimes, and that citizens shall in no case be handed over to a foreign Government, except for what is agreed upon in treaties and conventions regarding crimes of a genocidal nature or against international law.

There is no specific domestic legislation covering extradition.

When compared with section F of article 1 of the Convention relating to the Status of Refugees, the Immigration Act does not restrict the reasons for which a refugee can be expelled from Guatemala and refugee status cannot be granted if the individual requesting such status matches the hypotheses set forth in article 4 of Government Decision 383-2001, which are the same as those set forth in section F of article 1 of the Convention relating to the Status of Refugees.

Under article 18 of the Immigration Act, all matters relating to individuals given asylum, refugees and stateless persons are governed by the conventions and treaties and any other international arrangements to which Guatemala is a party.

Article 19 of the Immigration Act provides that Guatemala shall regard as refugees those foreigners to whom the competent authorities have granted refugee status, in accordance with the international conventions to which Guatemala is a party.

Paragraph 4

Has Guatemala addressed any of the concerns expressed in paragraph 4 of the resolution apart from having signed the Protocol Additional to the Agreement between Guatemala and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons and from having ratified the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction?

In addition to the treaties and conventions referred to earlier for the purpose of combating international terrorism, transnational organized crime, illicit drug trafficking, money-laundering, illicit arms trafficking and the illicit circulation of

nuclear materials and other potentially lethal materials, Guatemala has ratified the following conventions:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- Agreement between Guatemala and Colombia on the Prevention, Control and Suppression of Abuse of, and Illicit Trafficking in, Narcotic Drugs and Psychotropic Substances and their Precursors and Chemical Products;
- Agreement between Guatemala and Spain on Cooperation in Preventing Abuse of, and Controlling Illicit Trafficking in, Narcotic Drugs and Psychotropic Substances;
- Agreement between Guatemala and Venezuela on the Prevention, Control and Suppression of Abuse of, and Illicit Trafficking in, Narcotic Drugs and Psychotropic Substances;
- Agreement between Guatemala and Peru against Abuse and Production of, and Illicit Trafficking in, Narcotic Drugs and Psychotropic Substances;
- Convention between Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama establishing the Standing Central American Commission for the Eradication of the Production of, Trafficking in, Abuse and Illicit Use of Narcotic Drugs and Psychotropic Substances;
- Central American Convention for the Prevention and Suppression of Money-Laundering, Laundering of Other Assets and Related Crimes;
- Treaty on the Non-Proliferation of Nuclear Weapons;
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and Protocols I, II and III thereto;
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction;
- Inter-American Convention on Transparency in Conventional Weapons Acquisitions;
- Convention between Guatemala and Ecuador on Cooperation in Combating Drug Trafficking and Drug Addiction;
- Convention between Guatemala and Argentina on Cooperation in Combating Drug Trafficking and Drug Dependency;
- Convention between Guatemala and Chile on Cooperation in Combating Drug Trafficking and Drug Dependency;
- Convention between Guatemala and Mexico on Cooperation in Combating Drug Trafficking and Drug Dependency;
- Convention between Guatemala and the United States of America on Cooperation in Combating Drug Trafficking and Drug Dependency.

In addition, consultations are currently being held on the United Nations Convention against Transnational Organized Crime and the Protocols thereto, and on the convention for the suppression of illicit maritime and air trafficking in narcotic drugs in the Caribbean.

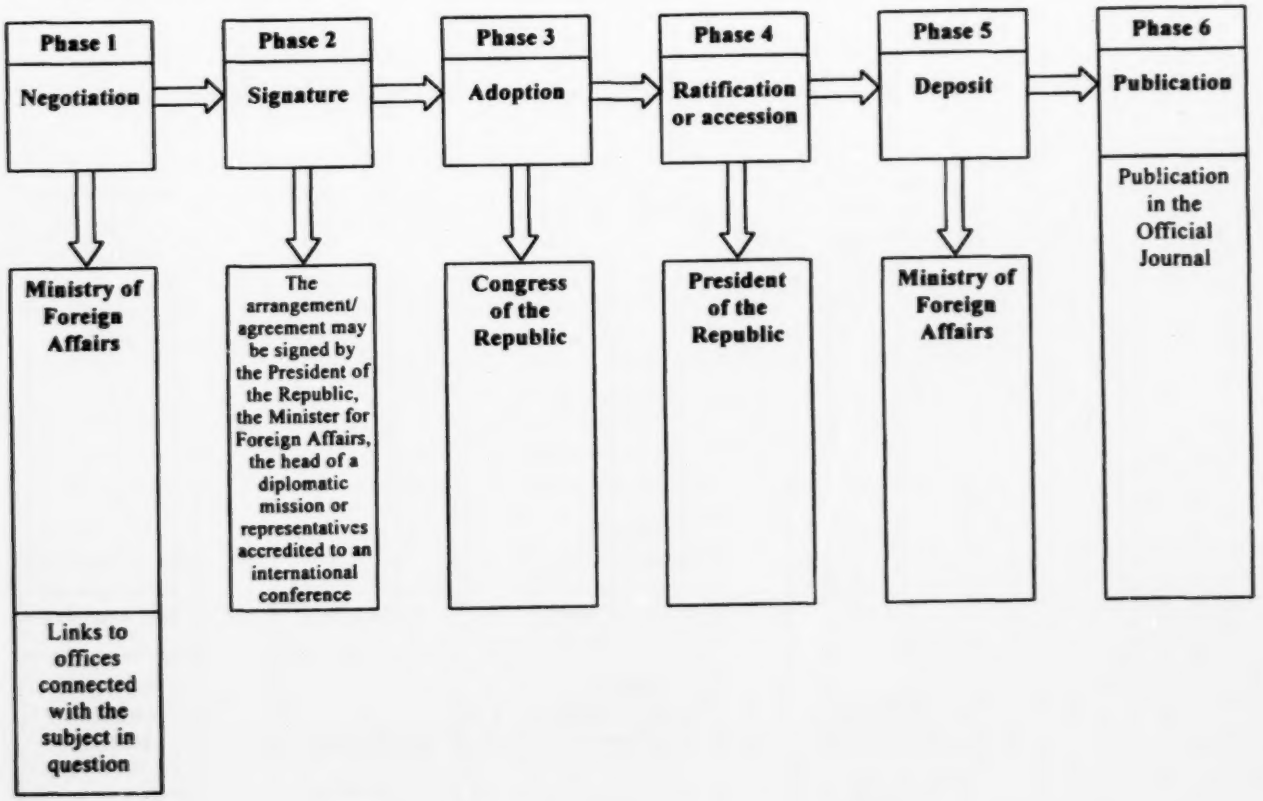
Other matters

Could Guatemala please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

Administrative process diagrams

Cooperation through the signature of arrangements and agreements

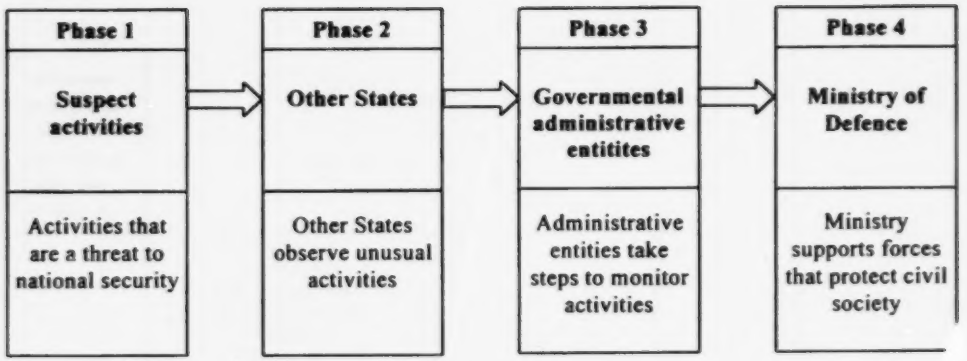
(Paragraph 3 (c), (d), and (e))


Phase 1
Negotiation
Phase 2
Signature
Phase 3
Adoption
Phase 4
Ratification or accession
Phase 5
Deposit
Phase 6
Publication
Ministry of Foreign Affairs
Links to offices connected with the subject in question
The arrangement/ agreement may be signed by the President of the Republic, the Minister for Foreign Affairs, the head of a diplomatic mission or representatives accredited to an international conference
Congress of the Republic
President of the Republic
Ministry of Foreign Affairs
Publication in the Official Journal

S/2002/784

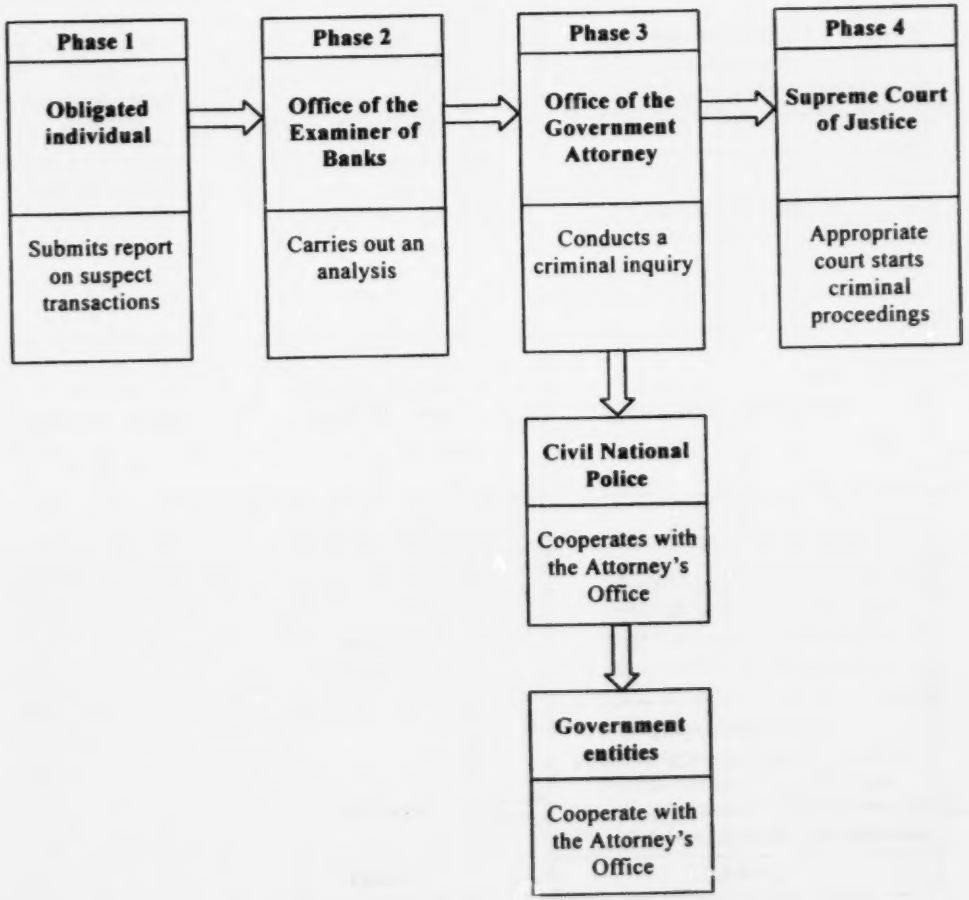
Early warning

(Paragraph 2 (b))



Inspection and control of the financial system (with respect to laundering of assets)

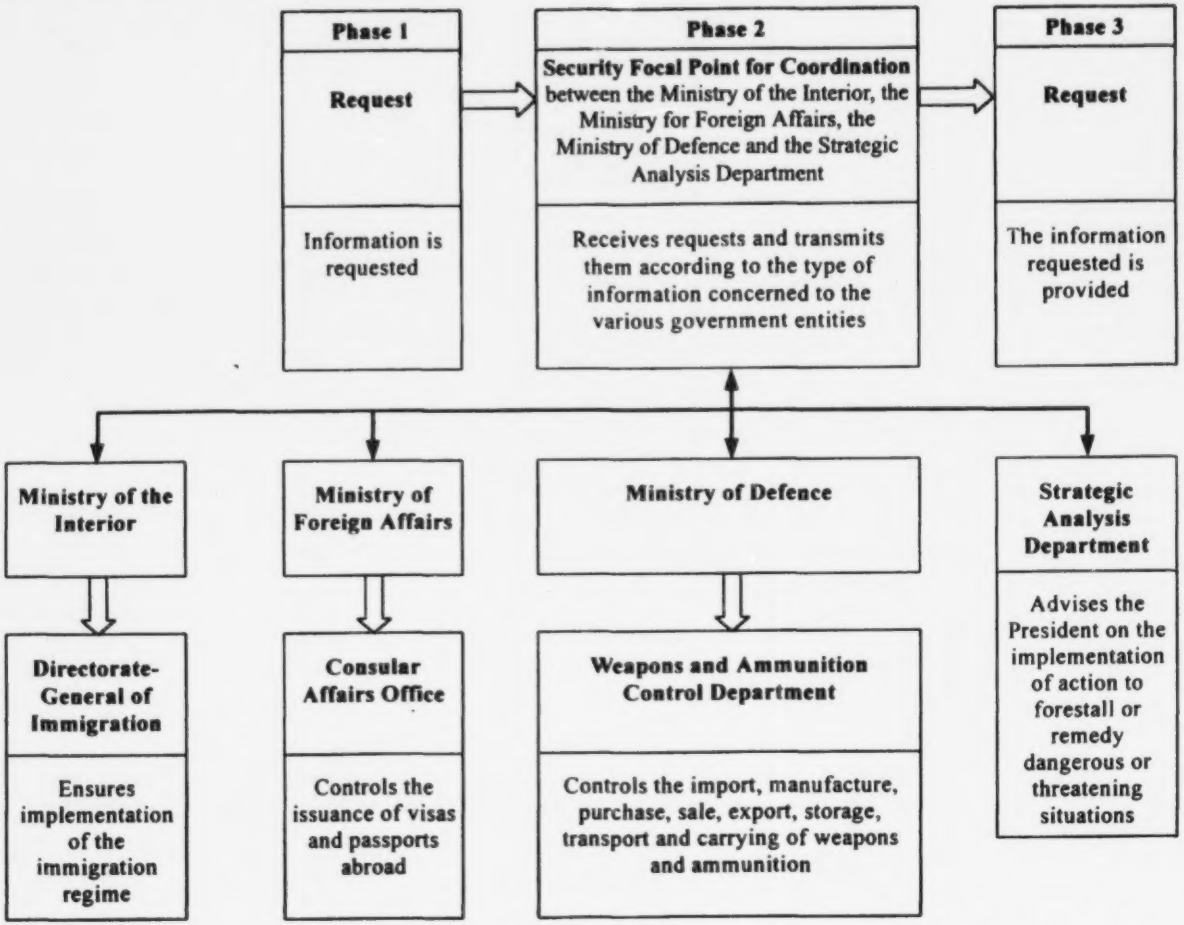
(Paragraph 1 (a) to (d); and paragraph 2 (e))



Note: This is the procedure currently followed with respect to the laundering of assets, in accordance with Decree No. 67-2001 of the Congress of the Republic. It could be the procedure to be followed with respect to the prevention and suppression of the financing of terrorism.

Exchange of information

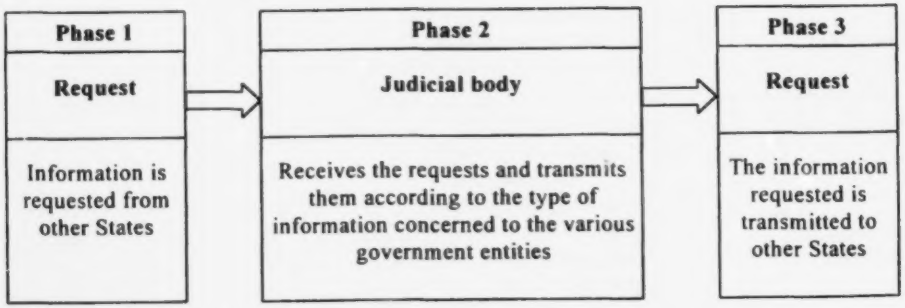
(Paragraph 3 (a) and (b))


Phase 1
Request
Information is requested
Phase 2
Security Focal Point for Coordination between the Ministry of the Interior, the Ministry for Foreign Affairs, the Ministry of Defence and the Strategic Analysis Department
Receives requests and transmits them according to the type of information concerned to the various government entities
Phase 3
Request
The information requested is provided
Ministry of the Interior
Directorate-General of Immigration
Ensures implementation of the immigration regime
Ministry of Foreign Affairs
Consular Affairs Office
Controls the issuance of visas and passports abroad
Ministry of Defence
Weapons and Ammunition Control Department
Controls the import, manufacture, purchase, sale, export, storage, transport and carrying of weapons and ammunition
Strategic Analysis Department
Advises the President on the implementation of action to forestall or remedy dangerous or threatening situations

Note: Operational information is exchanged on a reciprocal basis with similar international entities, in accordance with domestic legislation and the practices of international law.

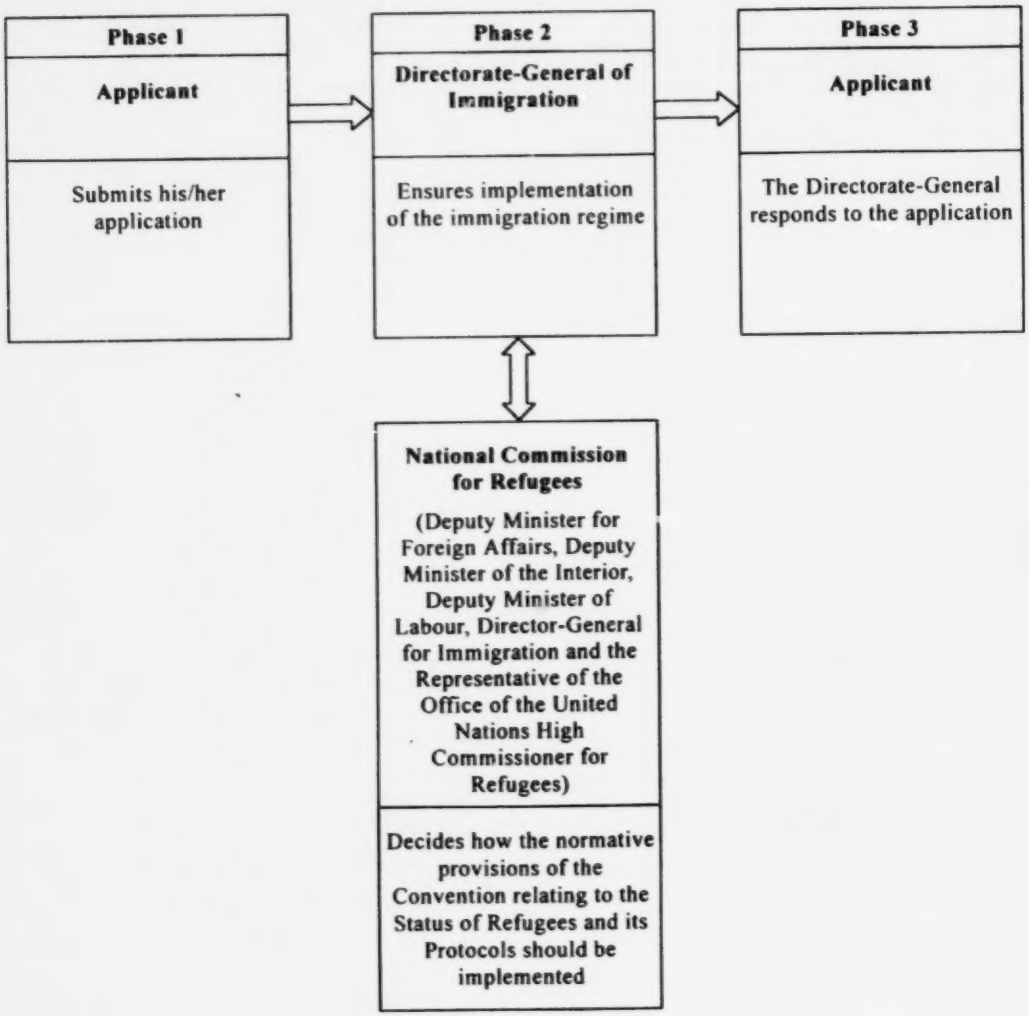
Legal assistance

(Paragraphs 2 (f) and 3 (b))


Phase 1
Request
Information is requested from other States
Phase 2
Judicial body
Receives the requests and transmits them according to the type of information concerned to the various government entities
Phase 3
Request
The information requested is transmitted to other States

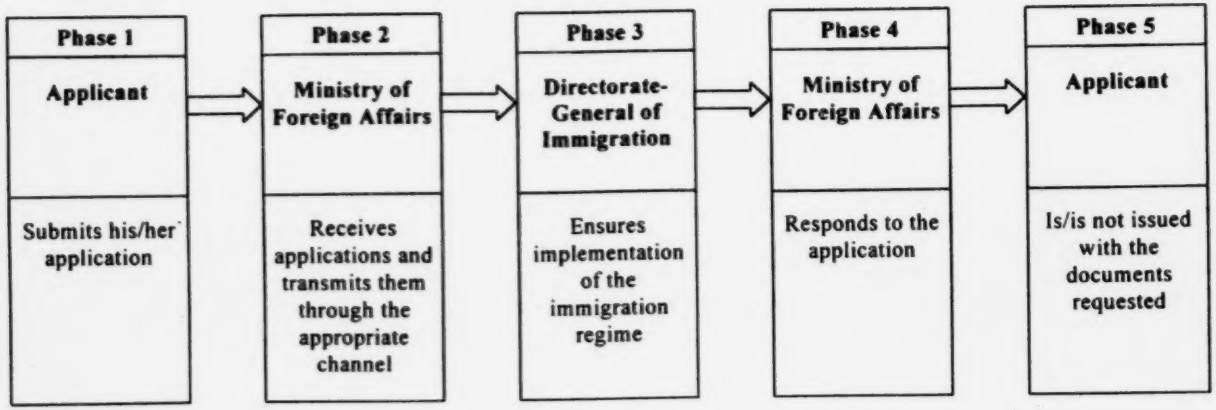
Refugee status

(Paragraph 2 (c) and (d); and paragraph 3 (f) and (g))


Phase 1
Applicant
Submits his/her application
Phase 2
Directorate-General of Immigration
Ensures implementation of the immigration regime
Phase 3
Applicant
The Directorate-General responds to the application
National Commission for Refugees
(Deputy Minister for Foreign Affairs, Deputy Minister of the Interior, Deputy Minister of Labour, Director-General for Immigration and the Representative of the Office of the United Nations High Commissioner for Refugees)
Decides how the normative provisions of the Convention relating to the Status of Refugees and its Protocols should be implemented

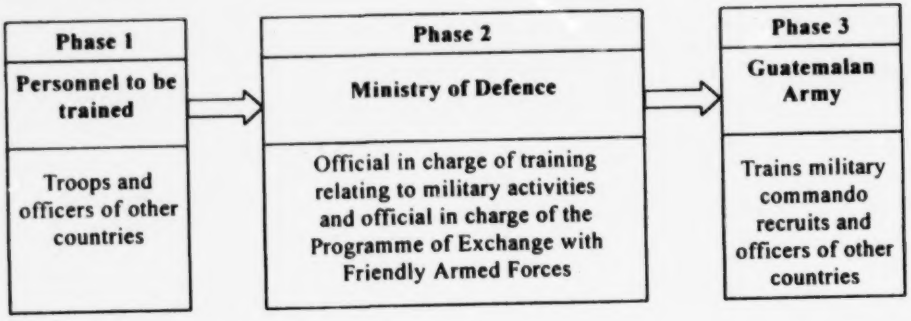
Issuance of travel documents

(Paragraph 2 (g))



Training relating to military activities

(Paragraph 2 (a))


Phase 1
Personnel to be trained
Troops and officers of other countries
Phase 2
Ministry of Defence
Official in charge of training relating to military activities and official in charge of the Programme of Exchange with Friendly Armed Forces
Phase 3
Guatemalan Army
Trains military commando recruits and officers of other countries